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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

PLUMBERS UNION LOCAL NO. 12  
PENSION FUND, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

AMBASSADORS GROUP INC., et al.,

Defendants.

No. 2:09-cv-00214-JLQ

CLASS ACTION

PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF  
PROPOSED CLASS ACTION  
SETTLEMENT

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**I. INTRODUCTION**

Plaintiff MARTA/ATU Local 732 Employees Retirement Plan (“Plaintiff”) hereby moves, pursuant to Federal Rule of Civil Procedure 23(e), for entry of the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice (“Notice Order”), submitted herewith, which (1) grants preliminary approval of the proposed settlement; (2) approves the form and manner of notice and directs the dissemination of the notice to Class Members; (3) sets a date by which objections, if any, to the settlement, Plan of Allocation, or the application for an award of attorneys’ fees and expenses must be served and filed with the Court; (4) sets a date by which Class Members may request exclusion from the Class; (5) sets a date by which Class Members wishing to participate in the settlement must submit properly completed Proof of Claim and Release forms and supporting documents; and (6) schedules a date and time for a hearing to consider final judicial approval of the proposed settlement.

The Settling Parties have entered into a Stipulation of Settlement dated as of July 11, 2011 (the “Stipulation”) that results in the resolution of all claims in this Litigation for the amount of \$7.5 million in cash on the terms set forth in the Stipulation.<sup>1</sup>

Plaintiff submits that the proposed settlement is a good result for the Class and should be preliminarily approved. The settlement, which was achieved after a comprehensive pre-discovery investigation by counsel, significant formal discovery, analysis by expert consultants, aggressive motion practice, and mediator-assisted settlement negotiations, provides a present recovery for the Class in the face of substantial challenges to any recovery after continued litigation and trial. In

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<sup>1</sup> Unless otherwise defined, all capitalized terms have the meanings ascribed to them in the Stipulation.

consideration for the payment of \$7.5 million, the settlement will result in the dismissal of the Second Amended Complaint for Violations of Federal Securities Laws, filed on October 18, 2010 (the “Complaint”), with prejudice and the release of all related claims against Defendants in the Litigation. For the reasons set forth herein, Plaintiff respectfully requests that the Court grant this motion.

## **II. FACTUAL BACKGROUND**

### **A. Nature of the Claims**

The First Amended Complaint for Violations of Federal Securities Laws (“First Amended Complaint”) alleges that Ambassadors Group, Inc. (“Ambassadors”), and certain of its officers and directors violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder, by making false statements thereby causing the inflation of Ambassadors’ stock prices between February 8, 2007 and October 23, 2007, inclusive. On June 2, 2010, the Court issued an order denying Defendants’ motions to dismiss, but finding only certain of the alleged misrepresentations actionable. On October 18, 2010, plaintiffs filed the Complaint for the purpose of adding an additional plaintiff. On March 17, 2011, the Court certified a plaintiff class of investors to include persons who purchased Ambassadors’ publicly traded securities between July 24, 2007 and October 23, 2007, consistent with the June 2, 2010 Order. In the Complaint, Plaintiff asserts that Defendants misrepresented the status of Ambassadors’ 2008 marketing campaign and concealed difficulties with respect to obtaining adequate student names to support the 2008 campaign. As a result, Plaintiff and the Class were economically harmed.

### **B. Procedural History**

On July 14, 2009, a class action was filed in this Court asserting claims under the federal securities laws against Ambassadors and certain of its then-current and

1 former officers and directors: Jeffrey D. Thomas, Chadwick J. Byrd, and Margaret M.  
2 Thomas.

3 On September 14, 2009, IBEW Local 351 Welfare, Pension and Annuity Funds  
4 (“IBEW Local 351”) filed a motion for appointment of lead plaintiff and appointment  
5 of counsel. The Court entered an order appointing IBEW Local 351 lead plaintiff and  
6 appointing counsel on October 22, 2009. IBEW Local 351 subsequently filed a  
7 motion to withdraw as lead plaintiff, and the Court entered an order appointing  
8 Plumbers Union Local No. 12 Pension Fund as substitute lead plaintiff on January 7,  
9 2010.

10 The First Amended Complaint was filed on January 11, 2010 and Defendants  
11 filed two separate motions to dismiss the First Amended Complaint on February 11,  
12 2010. After hearing argument on May 20, 2010, the Court entered an order on June 2,  
13 2010 denying Defendants’ motions to dismiss.

14 On July 2, 2010, defendant Chadwick J. Byrd filed a motion to certify the June  
15 2, 2010 Order for immediate interlocutory appeal. Plaintiff opposed that motion and  
16 the Court denied the request for interlocutory certification on August 10, 2010.

17 On September 22, 2010, Plumbers Union Local No. 12 Pension Fund filed a  
18 motion to intervene MARTA/ATU Local 732 Employees Retirement Plan as an  
19 additional plaintiff for standing purposes in light of the Court’s June 2, 2010 Order.  
20 The Court granted the motion to intervene on October 15, 2010. Plaintiff filed the  
21 Complaint on October 18, 2010.

22 On February 18, 2011, Plaintiff filed a motion for class certification. The Court  
23 entered an order certifying the proposed class and appointing Robbins Geller Rudman  
24 & Dowd LLP as class counsel and Hagens Berman Sobol Shapiro LLP as class liaison  
25 counsel on March 17, 2011.

1 As the Court is aware, discovery in federal securities class actions is generally  
2 stayed until claims have survived defendants' motion to dismiss. In the present case,  
3 Plaintiff and Defendants undertook discovery shortly after the Court denied  
4 Defendants' motions to dismiss. The parties exchanged document requests and  
5 interrogatories. Defendants produced thousands of documents which counsel for  
6 Plaintiff reviewed and analyzed. Documents were also obtained from third parties.

7 Both sides relied on the extensive production of internal documents to obtain an  
8 understanding of the facts relevant to evaluating the strengths and weakness of  
9 Plaintiff's claims and Defendants' potential defenses. The discovery was used both to  
10 prepare for the possibility of summary judgment motions and trial and to prepare to  
11 engage in meaningful mediation efforts.

#### 12 **C. Settlement Negotiations and Overview of the Settlement**

13 On April 1, 2011, in an effort to resolve the Litigation, the parties participated  
14 in a mediation before the Honorable Judge Layn R. Phillips (Ret.). As a result of that  
15 mediation, the parties reached an agreement-in-principle to settle the Litigation.

16 All negotiations were at arm's length and well informed by: (i) extensive  
17 informal investigation by counsel; (ii) analysis of the publicly available information  
18 about the Defendants; (iii) significant discovery practice, including review of  
19 thousands of documents produced by Defendants; (iv) an analysis of Ambassadors'  
20 financial wherewithal to sustain a judgment or pay a settlement; (v) discussions with  
21 consulting experts regarding the damages caused by the fraud alleged; (vi) motion  
22 practice; and (vii) frank discussions during the mediation process of the parties'  
23 respective positions concerning the merits of Plaintiff's claims.

#### 24 **D. Summary of the Proposed Settlement**

25 The settlement will be funded by a \$7,500,000 cash payment by or on behalf of  
26 the Settling Defendants, which will be paid into an escrow account on or before ten

1 business days following the Court's preliminary approval of the settlement. The  
 2 detailed terms of the settlement are set forth in the Stipulation, which is filed herewith.  
 3 The \$7.5 million in cash, less attorneys' fees and any expenses awarded by the Court,<sup>2</sup>  
 4 notice and administration expenses, and any tax expenses payable from the Settlement  
 5 Fund (the "Net Settlement Fund"), will be distributed to Authorized Claimants (*i.e.*,  
 6 Class Members who file timely and valid Proof of Claim and Release forms) in  
 7 accordance with the Plan of Allocation described fully in the Notice of Pendency and  
 8 Proposed Settlement of Class Action ("Notice"), attached as Exhibit A-1 to the Notice  
 9 Order. The Plan of Allocation is based on Plaintiff's theory of damages (consistent  
 10 with the claims upheld by the Court in its orders regarding this action) and treats all  
 11 potential claimants in a fair and equitable fashion. Each Authorized Claimant will be  
 12 paid that percentage of the Net Settlement Fund that such Authorized Claimant's  
 13 claim represents in relation to the total claims of all Authorized Claimants.

14 As set forth below, the settlement meets the standards for preliminary approval  
 15 as it falls well within the range of possible approval, was the product of extensive  
 16 arm's-length negotiations between experienced counsel, and has no obvious  
 17 deficiencies. Notice should also be issued to the Class given the notice program is the  
 18 best practicable under the circumstances.

19  
 20  
 21  
 22  
 23  
 24 <sup>2</sup> As set forth in the Notice, Lead Counsel will file a written request with the  
 25 Court for an award of attorneys' fees and expenses incurred in connection with the  
 26 prosecution of the Litigation.

### 1 III. ARGUMENT

#### 2 A. The Proposed Settlement Satisfies the Criteria for 3 Preliminary Approval

4 Judicial policy strongly favors settlement of class actions. *Class Plaintiffs v.*  
5 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Linney v. Cellular Alaska P'ship*, 151  
6 F.3d 1234, 1238 (9th Cir. 1998); *West v. Circle K Stores, Inc.*, No. CIV. S-04-0438  
7 WBS GGH, 2006 WL 1652598, at \*1 (E.D. Cal. June 13, 2006).

8 Approval of a class action settlement normally proceeds in two stages:  
9 preliminary approval, followed by notice to the class, and then final approval. *See*,  
10 *e.g.*, *West*, 2006 WL 1652598, at \*2. This case is now at the first stage of the process.  
11 Standards governing whether preliminary approval should be granted have “both a  
12 procedural and a substantive component.” *Young v. Polo Retail, LLC*, No. C-02-4546  
13 VRW, 2006 WL 3050861, at \*5 (N.D. Cal. Oct. 25, 2006). The court in *Young*,  
14 quoting from the *Manual for Complex Litigation* and *Newberg on Class Actions*,  
15 explained the procedure as follows,

16 “[i]f the proposed settlement appears to be the product of serious,  
17 informed, non-collusive negotiations, has no obvious deficiencies, does  
18 not improperly grant preferential treatment to class representatives or  
19 segments of the class, and falls within the range of possible approval,  
20 then the court should direct that the notice be given to the class members  
of a formal fairness hearing . . . .” *Manual for Complex Litigation*,  
Second §30.44 (1985). In addition, “[t]he court may find that the  
settlement proposal contains some merit, is within the range of  
reasonableness required for a settlement offer, or is presumptively  
valid.” *Newberg on Class Actions* §11.25 (1992).

21 2006 WL 3050861, at \*5 (omission in original); *see also Satchell v. Fed. Express*  
22 *Corp.*, No. C03-2659 SI, 2007 WL 1114010, at \*4 (N.D. Cal. Apr. 13, 2007) (granting  
23 preliminary approval after finding proposed settlement was non-collusive, had no  
24 obvious defects, and was within the range of possible settlement approval). Applying  
25 the standards set forth above, the proposed settlement should be preliminarily  
26 approved.

**B. The Settlement Is the Result of a Thorough, Rigorous, and Adversarial Process**

The procedural and settlement history of this case demonstrate an arm's length, adversarial relationship between the parties. The settlement discussions were contentious, with the parties far apart. However, the participation of a skilled mediator resulted in the parties reaching a settlement.

Courts have recognized that "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell*, 2007 WL 1114010, at \*4; *see also In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00 Civ. 6689 (SAS), 2003 WL 22244676, at \*4 (S.D.N.Y. Sept. 29, 2003) ("the fact that the Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable"). This presumption is particularly apt where, as here, the ultimate settlement required a number of attempts at mediation and, even then, went into "extra innings." *See, e.g., Hicks v. Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at \*5 (S.D.N.Y. Oct. 24, 2005) ("[a] breakdown in settlement negotiations can tend to display the negotiation's arms-length and non-collusive nature").

**C. The Settlement Merits Preliminary Approval and Class Members Should Be Given Notice and an Opportunity to Be Heard Concerning the Terms of the Settlement**

"[A]t this preliminary approval stage, the court need only 'determine whether the proposed settlement is within the range of possible approval.'" *West*, 2006 WL 1652598, at \*11 (citation omitted). This settlement, which requires \$7.5 million to be paid by or on behalf of the Settling Defendants, clearly is within such a range and merits consideration by all of the Members of the Class. Moreover, the fairness and adequacy of the settlement is further underscored by taking into account the obstacles the Class faced in ultimately succeeding on the merits, as well as the expense and

likely duration of the Litigation. *See Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 576 (9th Cir. 2004) (citing risk, expense, complexity, and likely duration of further litigation as factors supporting final approval of settlement).

Here, Plaintiff contends that Defendants falsely assured investors that there had been no material changes to Ambassadors' marketing campaign for the 2008 travel year, by assuring investors during a July 24, 2007 conference call that the marketing campaign for 2008 was similar to prior years. Plaintiff alleges that when Defendants made statements regarding Ambassadors' 2008 marketing campaign, that the Defendants concealed substantial changes and difficulties that Ambassadors had encountered, including a severe deterioration in the student name lists used to identify students and their families for the direct mail solicitations. Defendants dispute the severity of the problems identified by Plaintiff, whether investors were misled, and whether Defendants were reckless in disclosing the matters identified by Plaintiff.

Even if Plaintiff's claims had been upheld at trial, the parties would have challenged issues of loss causation and the proper methodologies for computing damages.

Defendants have a different view of damages and loss causation. Defendants contend that even with respect to the stock drop that the Court found had been sufficiently alleged to meet applicable pleading requirements, recoverable damages (if any) would be substantially less than asserted by Plaintiff.

Plaintiff acknowledges the risk in proving damages and recognizes the risk that a jury might not find liability or that Defendants' actions caused losses, or that, even if a jury reached findings favorable to the Class, a jury might substantially reduce the amount of recoverable damages. There is no doubt that the case both sides would present at trial would be both complex and nuanced, and would include a "battle of the experts" on the arcana of damages calculation, isolation of the damages attributable to

particular actions by Defendants, as well as proof of scienter and materiality. The results of the trial would almost certainly not end the Litigation, as one side would likely appeal, and it is quite possible that both sides would do so in the event that the jury found for the Class, but substantially reduced the damages sought. In the absence of a settlement, Class Members would have to wait several more years before they obtained any relief, even assuming they were successful and overcame every obstacle. It has been noted that “the difficulty Plaintiffs would encounter in proving their claims, the substantial litigation expenses, and a possible delay in recovery due to the appellate process, provide justifications for this Court’s approval of the proposed Settlement.” *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 373-74 (S.D. Ohio 2006).

Taking into account the risks of surviving a summary judgment motion and in proving liability and damages at trial, the proposed \$7.5 million settlement is a good result for the Class. The Ninth Circuit has pointed out that the very essence of settlement is compromise and that a settlement can be acceptable even though it may amount to only a fraction of the potential recovery. *Linney*, 151 F.3d at 1242. The proposed settlement equals approximately 17.5% of Plaintiff’s estimate of maximum total damages, which is significantly above the average recovery in class action settlements.<sup>3</sup> Thus, the proposed settlement meets the standards for preliminary and final approval.

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<sup>3</sup> A recent study by Cornerstone Research states that in 2010, settlements as a percentage of estimated “plaintiff-style” damages averaged 2.8%. Ellen M. Ryan, Laura E. Simmons, *Securities Class Action Settlements*, 2010 Review and Analysis, at 5 (Cornerstone Research, Inc. 2011).

**D. Members of the Class Should Be Given an Opportunity to Request Exclusion**

Notice of the proposed settlement and of the date and time of the final approval hearing should also advise Members of the Class of the method for requesting exclusion from the Class, the time within which they can make such decision, and the manner in which they can advise the Claims Administrator of their decision to request exclusion. *See* Fed. R. Civ. P. 23(c)(2)(B). The Notice, annexed to the proposed Notice Order as Exhibit A-1, advises the Members of the Class of their right to request exclusion, the consequences of making such a request (*i.e.*, they will not participate in the settlement, but will retain whatever rights they may have and not be bound by the settlement's terms and releases), the method by which they can request exclusion, and the deadline by which they must mail their request for exclusion. In addition, the Summary Notice (Exhibit A-3 to the Notice Order) advises Class Members of the deadline for exclusion and how to obtain a copy of the Notice. Providing an opportunity to request exclusion from the Class satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

**IV. THE PROPOSED NOTICE SATISFIES RULES 23(D) AND (E) AND DUE PROCESS REQUIREMENTS**

Lead Counsel proposes that mailed and published notices be given in the form of the Notice and Summary Notice, attached as Exhibits A-1 and A-3 to the Notice Order. Notice to the Class in the form and in the manner set forth in the Notice Order will fulfill the requirements of due process, comply with the Federal Rules of Civil Procedure, and inform Class Members of the settlement, their right to request exclusion from the Class, and their opportunity to appear and be heard at the fairness hearing.

Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

1 present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,  
 2 314 (1950); *Mendoza v. United States*, 623 F.2d 1338, 1352 (9th Cir. 1980). Plaintiff  
 3 proposes to give interested parties notice in two ways: by First-Class Mail, addressed  
 4 to all Class Members who can reasonably be identified and located, and by publication  
 5 notice in *Investor’s Business Daily*. In addition, the Notice and Proof of Claim and  
 6 Release form will be posted on the website of the Claims Administrator.

7 The form and substance of the notices are also sufficient. “Notice is  
 8 satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to  
 9 alert those with adverse viewpoints to investigate and to come forward and be heard.’”  
 10 *Churchill Vill.*, 361 F.3d at 575 (quoting *Mendoza*, 623 F.2d at 1352). The proposed  
 11 form of class notice describes in plain English the terms of the settlement, the  
 12 considerations that caused Lead Counsel to conclude that the settlement is fair and  
 13 adequate, the maximum counsel fees and expenses that will be sought, the procedure  
 14 for requesting exclusion from the Class, the procedure for objecting to the settlement,  
 15 the procedure for participating in the settlement, and the date and place of the fairness  
 16 hearing. The Notice will fairly apprise Class Members of the settlement and their  
 17 options with respect thereto, and fully satisfies all due process requirements.

## 18 **V. PROPOSED SCHEDULE OF EVENTS**

19 Plaintiff requests permission to provide notice of the settlement to Class  
 20 Members at this time. Lead Counsel have inserted the following proposed schedule  
 21 into the Notice Order and its Exhibits, submitted herewith.

22 Date by which the Notice is mailed September 7, 2011  
 23 to Class Members

24 Date by which the Summary Notice September 8, 2011  
 25 must be published

26 Date by which to file motions in October 11, 2011  
 support of the settlement, Plan of

1 Allocation, and attorneys' fees and  
2 expenses

3 Last day to request exclusion from      October 24, 2011  
4 the Class

5 Last day for Class Members to      October 24, 2011  
6 object to the settlement

7 Date by which reply briefs must be      November 14, 2011  
8 filed

9 Final approval hearing      At the Court's convenience on or  
after November 21, 2011

10 Last day for Class Members to      December 6, 2011  
11 submit a Proof of Claim and Release  
12 form

13 This schedule is similar to those used and approved by numerous courts in class  
14 action settlements and provides due process to Class Members with respect to their  
15 rights concerning the settlement. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370,  
16 1374-75 (9th Cir. 1993).

## 17 **VI. CONCLUSION**

18 For the reasons set forth above, Plaintiff respectfully requests that the Court  
19 enter the Notice Order: (1) preliminarily approving the proposed settlement; (2)  
20 directing the dissemination of notice to Class Members; (3) setting a date by which  
21 objections, if any, to the settlement, the Plan of Allocation, or the application for the  
22 award of attorneys' fees and expenses must be served and filed; (4) setting a date by  
23 which Class Members may request exclusion from the Class; (5) setting a date by  
24 which Class Members wishing to participate in the settlement must submit properly  
25 completed Proof of Claim and Release forms and supporting documents; and (6)  
26 scheduling a date and time for a hearing to consider whether to grant final judicial  
approval of the settlement.

1 DATED: July 13, 2011

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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NOT. OF HEARING RE PL'S MOT.  
FOR PRELIMINARY APPROVAL  
OF SETTLEMENT  
(2:09-cv-00214-JQL)

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